

try office of the county of Portneuf, on the 16th of the same month. On the 27th of January following, (1859) Renaud & Fitzpatrick dissolved partnership, the latter ceding to Renaud all his rights in the partnership concern.

In November, 1865, a balance of \$1589.11 of the above sum remained unpaid, according to the appellant's pretensions, and the defendant, Dame Luce Proulx, being then in possession of the lot hypothecated as above, the appellant instituted an action against her, to recover that amount, the conclusions of his declaration being as follows:—"That the said lot of land be declared to be mortgaged and hypothecated to the payment of the said sum of \$1589.11, in principal, interest, and costs; and that the defendant, as proprietor, possessor, and holder of the said lot of land, be condemned to pay to the plaintiff the said sum, with interest till pail, and costs; unless the said defendant preferred to abandon (*délaisser en justice*) the said lot of land to be sold by order, &c., which the said defendant should be held to choose between, within fifteen days from service of the judgment to be given in the cause; if not, at the expiration of the said delay, that she should be condemned purely and simply to the payment of the said sum."

To this declaration the defendant replied by a *défense en fait*, and a *défense en droit*, alleging as reasons in support of the latter, 1st, The illegality of the conclusions, which are personal against the defendant, who could only be condemned to abandon unless she preferred to pay; and 2nd, want of signification to Joseph Paquin, the personal debtor, of the transfer of the 27th January, 1859, by which Fitzpatrick ceded to Renaud his part in the amount of the obligation of the 11th Sept., 1858, the foundation of the action, and the want of any acceptance of the said transfer by Joseph Paquin.

Upon these pleadings issue was joined, and the Superior Court, on the 6th June last, rendered judgment, dismissing the action, and maintaining defendant's pleas.

This judgment was confirmed with costs by the Court of Appeals, the ground assigned being that the plaintiff had failed to prove that Joseph Paquin, at the date of the obli-

tion, was proprietor of the land, on which he, the plaintiff, claimed a hypothecary right.

*Taschereau & Blanchet*, for the appellant.

*Montambault & Taschereau*, for the respondent.

## COURT OF REVIEW.

MONTREAL, May 30.

DORAN v. DUGGAN.

*Practice—Ejectment—Lessors and Lessees Act.*

*Held*, that an action of ejectment cannot be brought under the Act, C. S. L. C. cap. 40, respecting Lessors and Lessees, unless there be a lease, or a holding by permission of the proprietor, without lease, i. e. unless the relation of landlord and tenant exists between the parties.

2. That where the plaintiff alleges that there is no lease or holding by his permission, the defect cannot be cured or supplied by the allegation of the defendant, in his plea to the merits, that there was a lease.

This was an action of ejectment under the *Lessors and Lessees Act*, brought by Julia Doran, widow of Patrick White, in her quality of tutrix to the children, issue of the marriage. The writ was issued on the 7th March, 1866, and returned on the 9th of March.

The declaration set out that on or about the 21st of February last, the defendant "without any lease verbal or written, entered upon and took possession" of a shop and dwelling-house belonging to the estate of the late Patrick White, "and that he still continues forcibly and against the wish and desire of the plaintiff to hold and occupy the said premises, and refuses to leave the same and deliver the same to the plaintiff, and refuses to allow plaintiff or her tenants to enter or occupy the said premises." The declaration went on to state that the plaintiff had let the same premises to one Ronald Macdonald, but was unable to give him possession, "through the forcible and illegal occupation of the defendant, to plaintiff's very great and serious loss and damage." Conclusions, that *saisie-gagerie* issue, and also for ejectment of the defendant.

The defendant first put in a preliminary plea, or *exception déclinatoire*, alleging that he could not be bound to answer the action, because the plaintiff had no right of action under the act respecting lessors and lessees,